2

Supreme Court, U. S.
FILED
DEC 15 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-185

LODGE 76, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and DISTRICT NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Petitioners,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
and
KEARNEY & TRECKER CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED AUGUST 2, 1975
CERTIORARI GRANTED OCTOBER 14, 1975

INDEX

	Page
Relevant docket entries	1
Complaint before the Wisconsin Employment Relations Commission	3
Motion to dismiss	7
Answer filed by respondents	8
Petition for Commission review	12
Petition for Circuit Court review	13
Hearing before an Examiner of the Wisconsin Employment Relations Commission	16
Reynolds Olson Tjensvold—	
Direct examination	17
Cross-examination	33
Redirect examination	40
Ronald Meyer—	
Direct examination	41
Andrew K. Wilson—	
Direct examination	46
Joint exhibit 1	47
Company exhibit 1	51
Company exhibit 3	52
Company exhibit 7	55
Company exhibit 15	60
Company exhibit 17	62
Company exhibit 21	63
Company exhibit 22	66

RELEVANT DOCKET ENTRIES

Year	
1972	
June 12	Complaint against Unions filed by Kearney & Trecker Corporation with Wisconsin Employment Relations Commission.
June 23	Motion to dismiss filed by Unions with Wisconsin Employment Relations Commission.
June 30	Answer filed by Unions.
July 14	Hearing held before Wisconsin Employment Relations Commission Examiner George Fleischli.
Aug. 3	Further hearing held before Wisconsin Employment Relations Commission Examiner.
1973	
Feb. 26	Wisconsin Employment Relations Commission Examiner issued Findings of Fact, Conclusion of Law, Order, and Supporting Memorandum.
Mar. 13	Unions filed with Wisconsin Employment Commission a petition for review of Examiner's Decision.
Apr. 23	Wisconsin Employment Relations Commission issued order affirming examiner's findings of fact, conclusions of law, and order.
May 7	Unions filed petition for review of Wisconsin Employment Relations Commission order with Circuit Court for Milwaukee County.

May 15 Wisconsin Employment Relations Commission filed counter-petition for enforcement of its order with Circuit Court for Milwaukee County.

May 24 Circuit Court for Milwaukee County granted Kearney & Trecker Corporation's petition to intervene in said proceedings.

Aug. 24 Milwaukee County Circuit Judge Robert W. Landry issued opinion affirming WERC order and denying Unions' petition to overrule same.

Aug. 29 Circuit Court for Milwaukee County entered judgment in accordance with opinion dated August 24, 1973.

Oct. 31 Unions filed notice to appeal to the Supreme Court of Wisconsin and undertaking.

1975

Mar. 4 Supreme Court of Wisconsin entered decision affirming judgment of Circuit Court for Milwaukee County.

May 6 Supreme Court of Wisconsin entered order denying Unions' motion for rehearing.

Aug. 2 Unions' petition for writ of certiorari to the Supreme Court of Wisconsin filed in Supreme Court of United States.

Oct. 14 Supreme Court of United States granted Unions' petition for writ of certiorari.

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Kearney & Trecker Corporation, Complainant, vs. Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, and District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, Respondents.	Case XI, No. 15,745, Cw-333.

COMPLAINT

(Filed June 15, 1972)

Complainant, by its attorneys, Peck, Brigden, Petajan, Lindner, Honzik & Peck, s.c., alleges as follows:

1. That the Complainant, Kearney & Trecker Corporation, is a corporation with a manufacturing plant and its principal offices located at 11000 Theodore Trecker Way, Milwaukee, Wisconsin 53214.

2. That the Respondent, Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization with offices at 11000 Theodore Trecker Way,

Milwaukee, Wisconsin 53214 and at 8022 West Becher Street, Milwaukee, Wisconsin 53227.

3. That the Respondent, District 10, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization with offices at 624 North 24th Street, Milwaukee, Wisconsin 53233.

4. That at all times material herein, the Respondent, Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, was the duly recognized collective bargaining representative for its production and maintenance employees in the manufacturing plants operated by the Complainant in Milwaukee County, Wisconsin, and said Respondent has been and still is affiliated with the Respondent, District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO.

5. That on March 7, 1972, the Respondent, Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, convened a meeting of its membership consisting of production and maintenance employees employed by the Complainant and represented by it in its said manufacturing plants, and at said meeting adopted a resolution which prohibited the said employees of the Complainant in the production and maintenance unit represented by Respondent, Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, to work in excess of 7½ hours per day or 37½ hours per week.

6. That prior and up to March 7, 1972, a substantial amount of hours of work in excess of 7½ hours per day and in excess of 37½ hours per week had been scheduled for a majority of the employees in the bargaining unit represented by said Lodge 76, International Association of Machinists and Aerospace workers, AFL-CIO, and with very few exceptions the hours as

scheduled by Complainant were worked by the employees involved.

7. That the performance of the work for the hours so scheduled in excess of 7½ per day and 37½ per week was essential and necessary to enable the Company to complete the operations involved within the time limits required to meet delivery schedules under penalty of damages or cancellations in connection with orders placed by various industrial customers, including the Armed Forces of the United States.

8. That the said resolution of March 7, 1972 prohibiting the membership of Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, to work in excess of 7½ hours per day and 37½ hours per week was taken unilaterally without any prior negotiations with the Complainant or even any notice to the Complainant of its intent to unilaterally control production of the Complainant's employees represented by the said Respondent. Furthermore, said membership action of March 7, 1972 was taken without prior notice to the membership that such action was in contemplation or that there was an intent to take action with respect thereto.

9. That the sole and only purpose of said action of March 7, 1972 limiting the number of hours of daily or weekly work which the Respondent, Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, would "permit" the employees represented by it to perform, was to interfere with the production of the Complainant and to harass it and put economic pressure upon it so that the Complainant would yield to the demand made upon Complainant by the said Respondent in connection with current bargaining and the implementation of certain items which had been negotiated to an impasse and which could be put into effect by the Complainant because of the prior termination of the labor agreement between the Complainant and the Respondents and the non-existence of any current labor agreement.

10. That in and by said action which commenced on March 7, 1972 and has continued in effect to the date of the execution of this Complaint, the Respondent, Lodge 76, International Association of Machinists and Aerospace Workers, AFL-CIO, with the ratification and approval of the Respondent, District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, has engaged in a "concerted effort to interfere with (Complainant's) production" by means other than "by leaving the premises in an orderly manner for the purpose of going on strike" in violation of Section 111.06 (2)(h) and Section 111.06 (3) of the Wisconsin Statutes.

Wherefore, Complainant prays that Respondents be ordered to immediately cease and desist from in any manner or in any wise implementing or giving effect to said action of March 7, 1972 and affirmatively advise the employees of the Complainant represented by the Respondents that said action by the Respondents was illegal and that the employees should perform their obligations to the Complainant in all ways unaffected by said action taken on March 7, 1972. In addition to such relief, Complainant prays for such other relief as may be appropriate and proper to give full and adequate relief to the Complainant for said illegal action.

PECK, BRIGDEN, PETAJAN,
LINDNER, HONZIK & PECK, s.c.
Attorneys for Complainant
700 North Water Street
Milwaukee, Wisconsin 53202

(Jurat omitted in printing.)

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSIONER

(Title omitted in printing)

MOTION

(Filed June 23, 1972)

Now comes the above named respondents by their attorneys, Gratz & Shneidman, by Robert E. Gratz, and respectfully moves the Wisconsin Employment Relations Commission to dismiss the complaint herein on the following basis:

1. That the Wisconsin Employment Relations Commission has no jurisdiction over the subject matter of the complaint in that the activity therein complained of is arguably prohibited by the National Labor Relations Act, as amended.

2. That the Wisconsin Employment Relations Commission has no jurisdiction over the subject matter of the complaint and that those provisions of the Wisconsin Employment Peace Act alleged by the complainant herein to have been violated is unconstitutional and in conflict with the National Labor Relations Act, as amended, and the activities of the respondents complained of are pre-empted by said federal Act.

Respondents further move the Wisconsin Employment Relations Commission to fix July 14, 1972 at 10:00 A. M. for the taking of evidence and argument with respect to the motions hereinbefore set forth; and that any and all evidence that be taken on said date concerning the merits of the complaint be deferred indefinitely; and that respondents' obligation to file an

answer be deferred until such time as the motions herein are determined.

Dated at Milwaukee, Wisconsin this ... day of June, 1972.

GRATZ & SHNEIDMAN
By /s/ ROBERT E. GRATZ

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

(Title omitted in printing)

ANSWER

(Filed June 30, 1972)

Now comes the above named respondents by their attorneys, Gratz & Shneidman by Robert E. Gratz, and for answer to the complaint filed herein admit, deny, allege and show to the Commission as follows:

1. Respondents admit all of the allegations contained in paragraphs 1, 2, 3 and 4 of the complaint.

2. In answer to paragraph 5 of the complaint, respondents allege that for a period of approximately 17 years, the respondent Lodge 76 and its predecessor local union were parties to a collective bargaining agreement with Kearney Trecker Corporation wherein the parties established the normal work day of 7½ hours per day and 37½ hours per week; that the most recent contract between the respondent Lodge 76 and the complaining corporation expired in March, 1971; and that for a period of approximately a year and one-half, the complainant corporation

and respondent Lodge 76 have been unable to reach agreement with respect to the terms and conditions of a collective bargaining agreement; that one of the areas in dispute between said parties was the complainant corporation's proposal to modify the 7½ hour day and 37½ hour week to 8 hours and 40 hours, respectively, for the payment of overtime and enjoyment of other related benefits; that on March 1 and March 3, 1972, the complainant corporation notified the respondent Lodge 76 and its individual members that it was unilaterally establishing a 8 hour day and 40 hour week commencing March 13, 1972; that in response to said proposed unilateral action by the complaining corporation, respondent Lodge 76 did on March 7, 1972 call a meeting of its membership for the purpose of conducting a strike ballot required by the constitution and by-laws of said Lodge and the International Union of which it is a component part; that after said strike ballot was in fact conducted, a member of Lodge 76 made a motion which was adopted wherein the employees of the complaining corporation agreed not to work in excess of 7½ hours per day and 37½ hours per week.

3. Respondents deny having any knowledge concerning the allegations contained in paragraph numbered 6 of the complainant and puts complainant to its proof thereon.

4. Respondents deny all of the allegations contained in paragraph numbered 7 of the complaint; respondents further allege that subsequent to March 7, 1972 and up to and including the present time, that there have been on layoff in the production and maintenance unit represented by Lodge 76 between 350 and 450 employees available for recall to perform essential and necessary work and for said complaining corporation to complete the operations within the time limits required by any and all of its contracts by recalling said laid off employees on the bargaining unit.

5. Answering paragraph numbered 8 of the complaint, respondents allege that the resolution and motion of March 7, 1972 was in response to the complainant corporation's advice on March 1 and March 3, 1972 that it was unilaterally going to change the hours of work that had existed prior thereto for a period of approximately 17 years; that respondents further allege that the meeting of March 7, 1972 and purpose thereof was not announced prior to said meeting to the membership or anyone else and that in addition to the strike vote, the action and motion passed with respect to hours of work was one of the items to be considered at said meeting.

6. Respondents deny all of the allegations and legal conclusions contained in paragraph numbered 9 of the complaint.

7. Respondents deny all of the allegations contained in paragraph numbered 10 and further denies specifically with respect thereto, that the actions have continued in effect and that District No. 10 either ratified or approved any such actions; respondents further deny that even if said actions have and are taking place, that said actions are a concerted effort to interfere with production in contravention of the sections referred to in paragraph numbered 10 of the complaint.

And for Separate Answer

1. Respondents allege that the complainant corporation is an employer engaged in an industry affecting commerce within the meaning of the Labor Management Relations Act of 1947, as amended; and further alleges that the respondents are unions representing employees engaged in an industry affecting commerce within the meaning of the same Act.

2. That the respondents allege that the Wisconsin Employment Relations Commission has no jurisdiction over the subject

matter of the complaint in that the activity herein complained of is the subject of an unfair labor practice charge with respect to the identical activities currently pending before the Thirtieth Regional Office of the National Labor Relations Board wherein complainants herein contend that the precise activity constitutes a violation under Section 8 of the federal Act.

3. That the respondents allege that the Wisconsin Employment Relations Commission has no jurisdiction over the subject matter of the complaint in that said activity is protected under Section 13 and Section 501 (2) of the Labor Management Relations Act of 1947, as amended.

4. Respondents further allege that the Wisconsin Employment Relations Commission has no jurisdiction over the subject matter of the complaint and that the provisions of the Wisconsin Employment Peace Act alleged by the complainant herein to have been violated is unconstitutional and in conflict with the Labor Management Relations Act of 1947, as amended, and the activity of the respondents complained of are pre-empted by said federal Act.

Wherefore, respondents respectfully request dismissal of the complaint herein on the basis that the Wisconsin Employment Relations Commission has no jurisdiction of the subject matter and further requests dismissal of the complaint upon the merits.

GRATZ & SHNEIDMAN
Attorneys for the Respondents

P.O. Address:
735 West Wisconsin Avenue
Milwaukee, Wisconsin 53233

(Jurat omitted in printing)

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

(Title omitted in printing)

PETITION FOR REVIEW

(Filed March 13, 1973)

Now come the above named Respondents by Gratz, Shneidman & Myers, by Robert E. Gratz, their attorney, and for petition for review in the above captioned matter, allege and show to the Wisconsin Employment Relations Commission as follows:

1. That on February 26, 1973, Examiner George R. Fleischli issued certain findings of fact and conclusions of law and order in the above captioned matter.

2. That pursuant to the Wisconsin Administrative Code pertaining to the Wisconsin Employment Relations Board, more particularly E.R.B. 12.09(2)(b), your Respondents allege that a substantial question of law and administrative policy is raised by the legal conclusions contained in said findings of fact, conclusions of law hereinabove referred to issued by Examiner Fleischli.

3. That your Respondents are aggrieved by the conclusions of law aforesaid and accordance with their position stated at the time of hearing and in subsequent briefs claim that the conclusions of law made by Examiner Fleischli are in error for the following reasons:

A. That the controversy here in question is moot.

B. That the activities found by the Examiner Fleischli to have violated the prohibited practices with respect to the Respondents herein are pre-empted by federal law.

Dated at Milwaukee, Wisconsin this 12th day of March, 1973.

LODGE 76 AND DISTRICT NO. 10,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO
By /s/ ROBERT E. GRATZ
Their Attorney

STATE OF WISCONSIN MILWAUKEE COUNTY
CIRCUIT COURT

Lodge 76 International Association of Machinists and Aerospace Workers, AFL-CIO, and District No. 10 International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioners, vs. Wisconsin Employment Relations Commission, Respondent.	Case No. 410071 Judge Landry

PETITION FOR REVIEW

(Filed May 7, 1973)

Now come the above named petitioners by their attorney, Robert E. Gratz, and for cause of action allege and show to the court as follows:

1. That your petitioner, Lodge 76 International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organizations representing production and maintenance employees of the Kearney & Trecker Corporation located in Milwaukee County, Wisconsin; and that the office and place of business of your petitioner Lodge 76 is also located in Milwaukee County, Wisconsin; that your petitioner, District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization representing employees in Milwaukee County and elsewhere and among its constituent Locals also represents the members of Lodge 76; that the principal place of business of petitioner District No. 10 is 624 North 24th Street in the City of Milwaukee, Milwaukee County, State of Wisconsin.

2. That the Wisconsin Employment Relations Commission is and at all times hereinafter mentioned was an administrative body created and existing pursuant to Chapter 111 of the Statutes of the State of Wisconsin and that Morris Slavney is the Chairman and Zel Rice and Joseph B. Kerkman are Commissioners and members of said Commission.

3. That Kearney & Trecker Corporation is an employer engaged in the manufacture of machine tools in the City of West Allis, Milwaukee County, Wisconsin, and presently employs approximately 850 members represented by the petitioning Lodge 76 and District No. 10.

4. That heretofore the Kearney & Trecker Corporation did file a complaint with the respondent Commission alleging that your petitioners had committed certain unfair labor practices within the meaning of Chapter 111 of the Wisconsin Statutes; that after due hearing and briefs filed by the respective parties, an Examiner of the Commission on February 26, 1973 issued findings of fact, conclusions of law and order with respect to same and found that your petitioners had violated the Act in

respect to that complained of by the Kearney & Trecker Corporation; that in accordance with the administrative code, your petitioners appealed the decision of the Examiner to the three Commissioners and on April 23, 1973, the Commissioners affirmed the Examiner's findings of fact, conclusions of law and order.

5. Your petitioners allege that they are aggrieved and directly affected by the decision of the respondent Commission and your petitioners allege that the affirmed findings of fact, conclusions of law and order should be reversed on the following grounds:

A. That, said findings, decision and order are contrary to constitutional rights and privileges of your petitioners and the members they represent.

B. That the findings of fact, conclusions of law, decision and order of the respondent Commission is in excess of the statutory authority and jurisdiction of said Commission and also affected by other errors of law.

C. That said findings of fact, conclusions of law, order and decision is arbitrary and capricious.

Wherefore, your petitioners pray that the court enter a judgment reversing such decision and order of the respondent Commission and for such other relief as the facts and circumstances may warrant.

Dated at Milwaukee, Wisconsin this ..... day of May, 1973.

/s/ Robert E. Gratz
Attorney for Petitioners

Opinions, Orders and Judgments relevant hereto may be found in the Petition for Certiorari appendix as follows:

Appendix A—Order of the Supreme Court of Wisconsin Denying Petitioners' Motion for Rehearing .. A-1

Appendix B—Opinion and Judgment of the Supreme Court of Wisconsin A-2

Appendix C—Opinion and Judgment of the Circuit Court for Milwaukee County A-15

Appendix D—Order, Findings of Fact, Conclusions of Law and Supporting Memorandum of the Wisconsin Employment Relations Commission A-22

[56*] STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

(Title Omitted in Printing)

• • • • • • • •

Pursuant to notice, the above-entitled matter came on for hearing before an Examiner of the Wisconsin Employment Relations Commission in the Milwaukee State Office Building, Milwaukee, Wisconsin, on July 14, 1972 and August 3, 1972 at 10:00 a.m. o'clock on each day.

Present: George R. Fleischli, Examiner

Appearances: Peck, Brigden, Petajan, Lindner, Honzik & Peck, Attorneys at Law, by Egon W. Peck, appearing on behalf of the Complainant.

---

* Numbers appearing in brackets in text indicate page numbers of the Record rather than the original stenographic transcript of testimony.

Gratz & Shneidman, Attorneys at Law, by Robert E. Gratz, appearing on behalf of the Respondents.

Whereupon the following proceedings were held:

• • • • • • • •

[59] Examiner Fleischli: The Official Reporter prepares the only official transcript of these proceedings and all citations in briefs and arguments must refer to the official record. Prior to going on the record today, the Complainant supplied me with a copy of what purports to be the collective bargaining agreement and it is my understanding that the Respondents have no objection to that being admitted as Exhibit No. 1.

Mr. Gratz: I have no objection. I think the record should note that this is an expired agreement terminated in March of 1971—June of 1971.

Examiner Fleischli: Were there any extensions or is that the expiration date provided?

Mr. Gratz: This contract was terminated by the Employer in June of 1971. There is no collective bargaining agreement in effect between the parties.

• • • • • • • •

[68] **MR. REYNOLDS OLSON TJENVOLD**
having been called as a Witness by Counsel for the Complainant and having been duly sworn on oath, was examined and testified as follows:

Direct Examination

Of Mr. Reynolds Olson Tjensvold by Mr. Peck

Q. Would you give your full name for the record, please?
A. Reynolds Olson Tjensvold, T-j-e-n-s-v-o-l-d.

Q. You're employed by Kearney & Trecker Corporation? A. Yes.

Q. Complainant in this action? A. Yes.

Q. What capacity? A. Manager, Labor Relations.

Q. You've been employed by Kearney & Trecker as Manager of Labor Relations since when? A. Since 1968 on my most recent tour of duty. I was there previously.

• • • • • • • •

[69] Q. Going forward from the last document, you will find a document identified as Company Exhibit No. 22. It is a letter dated June 22, 1971. Was that written and sent on about that date to Local Lodge 76? A. It was.

Q. We offer in evidence Company Exhibit No. 22.

Examiner Fleischli: Any objection?

Mr. Gratz: None.

Examiner Fleischli: Exhibit No. 22 is received.

(Document previously marked for identification as Complainant's Exhibit No. 22 was received in evidence.)

• • • • • • • •

Q. The next Exhibit, Company Exhibit No. 21, would you describe that? A. It's a letter of March 1, 1972 to Local Lodge 76 and it details the Company's forty-hour week proposal and it's **[70]** signed by Andrew K. Wilson, Vice President, Industrial Relations.

Q. And it was sent to the Local on or about that date? A. It was.

Q. We'll offer that in evidence as Company Exhibit No. 21.

Mr. Gratz: No objection.

Examiner Fleischli: It's admitted.

(Document previously marked for identification as Complainant's Exhibit No. 21 was received in evidence.)

• • • • • • • •

Q. Going forward in the binder, the next document, I believe, is Exhibit No. 19. A. Yes.

Q. Would you identify that? A. It is a copy of the handbill or flyer distributed by the Union at the plant gate. The headline is "K-T Imposes 40-Hr. Week!" And on the second page the key item is that this constitutes an advance notice of a mass meeting being called for Tuesday, March 7th by Lodge 76 Educational Committee. It was distributed at the plant gates to the employes as they entered or left the plant on March 3rd.

Q. On the second page your reference was to the bottom portion **[71]** reading "Advance Notice, A Mass Meeting Is Being Called for Tuesday, March 7, 1:30 P.M.—Serb Hall—Strike Sanction Vote Will Be Taken. Lodge 76, IAMAW Educational Committee." A. Correct.

Q. What is the Educational Committee of the Local? Do you know? A. One of the committees of the Union. The function, I assume, is to give the employes who are members of the Union information.

Q. We offer in evidence, Company Exhibit No. 19.

Mr. Gratz: No objection.

Examiner Fleischli: It's admitted.

(Document previously marked for identification as Complainant's Exhibit No. 19 was received in evidence.)

• • • • • • • •

Q. Company Exhibit No. 18 is what? A. That is a bulletin board notice posted by the Union, a copy of which was given to the Company and received by the Company on March 6th. The message on it is, "Lodge 76 Mass Meeting March 7, 1:30 P.M., Serb Hall, 5101 W. Oklahoma Ave."

Q. May I ask you, Mr. Tjensvold, whether or not the Company had been asked—strike that. Was March 7th a regular work day? A. Yes.

Q. Was 1:30 p.m. during the work hours? A. Yes, it was.

Q. Was there any request by the Union for permission to hold this meeting during the work hours? A. Not prior to the time that we received this notice for posting.

Q. Was there ever a request for permission? A. Not specifically as such but we were advised by the Union that they were holding this meeting on the 6th.

Q. They merely advised you that they were holding this meeting and they didn't ask for permission? A. That is correct.

* * * * * * *

[72] Q. Tell us about Company Exhibit No. 17. A. This is a document that was written by hand by A. K. Wilson to be given to the Union in a negotiating meeting that was being held on that date, Friday, March 10th at the offices of the Federal Mediation Service and as a result of the mass meeting that was held on March 7th, action was taken by the Union membership to refuse to work a 40-hour workweek which was to be started on the subsequent Monday and also that the employes would not work any overtime. At this meeting, also, as noted in the earlier handbill from the Union, the meeting was called for the purpose of taking a strike sanction authorization vote. That vote was taken. Strike sanction authorization was sought subsequently from the IAM in accordance with their constitution. But, the public press reporting the story said that a strike vote had been taken. As a result of that publicity the Commissioner of the Federal Mediation Service called both parites and asked if they could arrange for a meeting on their motion to discuss the matters which were apparently leading to a **[73]** strike. And it was on agreement from that call that this meeting on March 10th was held in the Federal Mediation office at that time. The principal problem that confronted us was the institution of the

40-hour workweek which had been an item at impasse from the negotiations dating back to the middle of 1971. And, in order to make it possible for us, in a clearer atmosphere, to negotiate, the Company offered this document as a proposal to defer for a period of two weeks, instituting the 40-hour workweek and, in return for that, asked the Union to assure that daily overtime would be worked as was required. And, the burden of this document is that this offer was made in order to make it possible for the Company to continue to operate with overtime which had been in effect for that period of time around the 10th and there were also recalls of employment going on at that time too.

Q. Prior to March 7th, had overtime been scheduled for various employes and had overtime been worked? A. Yes, it had. A substantial amount of overtime had been worked. On Saturday, many of the employes—I would say as high as three hundred out of the six hundred unit employes and during the week about an equal number or maybe a lesser number on a daily basis.

Q. The 40-hour workweek plan was not related to anything other than the creation of a new normal workweek rather than having just a 40-hour work limitation. Is that a fair statement? A. That's correct. Prior to this time, for a period of about seventeen years, the Company had had a 37½-hour workweek and a 7½-hour workday and overtime being paid for work beyond the 7½ hours a day or 37½ hours a week. In negotiations the proposal was made by the Company to have the normal 8-hour workday, 40-hour week and this matter was negotiated to impasse but was not put into effect as other impasse items were also negotiated to impasse had been in June of 1971 because the Company had said to the Union that they would not put the 40-hour workweek into effect until such time as recalls and overtime hours were being worked so that it would not be necessary to lay off employes.

Q. Let me be sure there's no misunderstanding. You used the terms, "putting the 40-hour workweek in effect." You were

not talking about a 40-hour workweek schedule but a 40-hour [74] workweek, normal workweek plan. A. A normal workweek of 40 hours a week and 8 hours a day.

Q. And that did not preclude overtime beyond that? A. No, there was no intention to preclude overtime.

Q. So when you were talking about 40 hours, that was not the limit. It was the basic—— A. (Interrupting) It was the normal workweek as defined in the agreement.

Q. Under the previous contract and under the normal 7½-hour workday and the normal 37½-hour workweek, what was the practice followed by the Company with reference to whether employes had to work overtime? Was it voluntary or mandatory? A. Well, overtime at Kearney & Trecker is at the employe's option. The employe is requested to work overtime and they may, for good reason or for no reason at all, reject overtime and not work it. This led, one time, to an elaborate procedure for scheduling overtime, altering selections and so forth. But, over the course of years the number of people who refused overtime consistently was at about 5% of those who were requested. So, other people had to be selected.

Q. Was there ever, prior to March 7th, any Union faction or any universal refusal of overtime? A. No.

Q. In the negotiations prior to March 7, 1972 was there any issue with reference to this matter of overtime introduced by either the Company or the Union other than what the normal workweek should be. A. There was no question of limiting or changing the terms of overtime other than, as I said, an elaborate mechanical system which we called MATRIX.

Q. What I am specifically referring to and asking you, Mr. Tpensvold is this. Was there, prior to March 7, 1972, of the Union's resolution with reference to prohibiting overtime was adopted, was there any indication to the Company that the Union

was objecting to overtime? A. No, sir, never any discussion on the subject.

* * * * * * *

[75] Examiner Fleischli: Exhibit No. 17 is admitted.

(Document previously marked for identification as Complainant's Exhibit No. 17 was received in evidence.)

* * * * * * *

[76] Q. All right, Mr. Tjensvold, would you go forward to a document consisting of two pages which I believe we have identified as Company Exhibit No. 15, dated March 11, 1972. A. It's a two-page document, handwritten, dated March 11, 1972 signed by A. K. Wilson for Kearney & Trecker Corporation.

Q. Now, maybe at this point it might be well, for the record, to identify Mr. A. K. Wilson. A. Andrew K. Wilson is the Vice-President of Industrial Relations for Kearney & Trecker.

* * * * * * *

Q. All right. Having identified Mr. Wilson, will you proceed? A. This document is a proposal, also in the continuing negotiations on that Saturday, and it proposes five points, the first of which is that the 40-hour workweek plan was to be instituted on the following Monday would be withdrawn and not considered an impasse item but would, instead, be subject to further negotiations.

The second paragraph indicates that it would not be instituted unless and until there was an agreement with respect [77] to a 40-hour normal workweek.

The third paragraph indicates the normal schedule, 7½ hours a day, 37½ hours a week would be continued thereafter until such an agreement change was reached.

And the fourth paragraph says that if, as and when overtime is scheduled, only daily overtime in excess of 30 minutes may be optional as all overtime had been prior to this time and that

the employes would be excused from overtime for reasons acceptable to Section Managers.

Q. Would you explain what, if anything, you know about the Section Manager situation? A. Well, heretofore the option of overtime was given to the supervisor when the employe said that he did or did not accept the offer to work overtime. Then the supervisor was empowered to accept whatever reasons he gave. Now, because of the need for additional hours of overtime, we didn't want there to be a variety of reasons for loss of the overtime and, therefore, excuses, or to be granted only by the Section Manager to whom the supervisors, first line supervisors, report.

Q. Go ahead. A. The fifth section deals with Saturday or Sunday overtime and it was stated there that they could be refused on the same basis as in the past. In other words, for any reason or for no reason And, the last paragraph of the proposal is unnumbered but it says this is subject to full cooperation of the bargaining committee and the employees in the implementation of the objectives of this agreement. The agreement, in this case, being limited to this five point proposal.

Q. During the course of—well, we offer in evidence, Company Exhibit No. 15.

Mr. Gratz: No objection.

Examiner Fleischli: It's admitted.

(Document previously marked for identification as Complainant's Exhibit No. 15 was received in evidence.)

Direct Examination of Mr. Tjensvold continued

Q. During the course of that meeting, you got an answer from the Union. Is that set out in what has been identified as Company Exhibit No. 14? A. That's correct. That's the Union's answer—the Union's answer to the Company's proposal. I see John David's hand again.

[78] Q. Is that in Mr. John David's handwriting? A. Yes. In this he answers the specific five points of the Wilson proposal by stating that items one, two and three are acceptable. Those are the items dealing with the withdrawal of the 40-hour workweek as an impasse item, the retention of the normal 37½ hour work schedule and there would be no changes until negotiated but that items four and five were not related to those and, therefore, were not acceptable. Those are the items relating to the overtime—the conditions of overtime and the second paragraph of the Union's answer states that we suggest that the moratorium on overtime be continued and that negotiations continue on all items. The Union will be available stating Monday, March 13, 1972 and hopefully a settlement can be reached in a short time.

Now, again, the Union made the recommendation in writing that negotiations continue and while this document is specific to that point there was a lot of discussion surrounding it.

Q. Referring to the discussion surrounding it, do you recall the discussion between myself and Mr. David in reference to Mr. David's request that on one hand there be a moratorium by the Company and my response as to a moratorium on the part of the Union? Do you remember that discussion? A. Yes.

Q. Would you testify as to what that discussion was? A. You said that because this moratorium had been established on a 40-hour workweek that the Company could reasonably expect a *quid pro quo* in the form of lifting the ban on overtime that had been enacted earlier that week.

Q. The March 7th meeting? A. The March 7th meeting. And Mr. David answered, as I recall, that this was a matter that he, himself, could not do but that it would require an action of the membership just as placing the ban on had done. He further recommended that there be a membership meeting called for the following Saturday. I believe that was the 18th, and that he would see to it that a membership meeting was called and that the matter of the overtime ban would be reconsidered.

He stated further that he hoped that the negotiations starting on Monday, the 13th, would be productive enough so that at the **[79]** time of the meeting of the 18th he could go before the membership with a complete contract for their consideration, not limited only to the matter of reconsideration of the overtime ban.

* * * * * * *

Q. Has there ever been any membership meeting at which the so-called *quid pro quo* of the lifting of the overtime ban of March 7th was presented to the membership for consideration? A. To my knowledge, there has been no membership meeting called for that purpose.

Q. Despite the fact that no membership meeting was called for that purpose, has the Company, in effect, continued the moratorium on the institution of the 40-hour workweek plan? A. Indeed it has. The normal workweek is 37½ hours. The normal day is 7½ hours.

Q. Did you attempt to schedule overtime since that time? A. Yes, we have but no overtime has been worked with the exception of three employes who worked on one Saturday.

Q. We'll get to that later on. We, at this time, offer Company Exhibit No. 14.

Mr. Gratz: I have no objection.

Examiner Fleischli: Exhibit No. 14 is received.

(Document previously marked for identification as Complainant's Exhibit No. 14 was received in evidence.)

* * * * * * *

[80] Q. Now, there is a document identified as Company Exhibit No. 13. A. Exhibit No. 13 is a handbill or flyer distributed by the Union to its members on March 16, 1972. It is signed by all members of the bargaining committee and noted it is published by Lodge 76 Educational Committee on March 16, 1972. An item of particular interest was the second paragraph,

a reminder. It says, "The Educational Committee wishes to remind you that even though the talks with the Company are continuing, the Policies voted on by the Production and Maintenance Employees Will continue in effect until a Labor Agreement is signed." The reference there is to the matter of——

* * * * * * *

Examiner Fleischli: Exhibit No. 13 is admitted.

(Document previously marked for identification as Complainant's Exhibit No. 13 was received in evidence.)

* * * * * * *

Q. And has there been any announcement of any change of policy other than that which is stated in Company Exhibit No. 13? A. No, there is not.

Q. I'm referring now to Company Exhibit No. 12. A. Company Exhibit No. 12 is a letter of March 16, 1972, to **[81]** Local Lodge 76 signed by Andrew K. Wilson and this confirms the proposal that the Company made in the negotiations relative to abandoning the request for a 40-hour workweek and retaining the 37½-hour workweek and discussion about the need for the hours that are scheduled to be worked effectively and other changes that were then proposed, one of which involves pay for union lost time. One involves an across-the-board increase of 3% which was offered then for the first time and the terms of agreement which had been under discussion since the outset, the term of the new agreement, one year. Basically, this is what I referred to earlier as the concessions that the Company had made during that week of intensive negotiations in the hope that there would be a meeting on the 18th which these matters could be acted on by the membership.

Q. This was sent to the Local on March 16th? A. Yes, and it had been verbally given to them earlier and it was given to them in written form and confirmed what had been discussed.

Q. I'll offer this in evidence.

Mr. Gratz: No objection.

Examiner Fleischli: Exhibit No. 12 is received.

(Document previously marked for identification as Complainant's Exhibit No. 12 was received in evidence.)

* * * * * * * *

[82] Q. Company Exhibit No. 9, would you describe that? A. This is a copy of an open letter to Mr. Francis J. Trecker which was distributed as a handbill by the Union to the members of Lodge 76 and it is signed——

Q. (Interrupting) Was it distributed on June 1, 1972? A. June 1, 1972 and distributed on that date, and signed by Lodge 76 Educational Committee. It is, presumedly, an answer to some of the points that were raised in Mr. Trecker's letter, Exhibit No. 10, with added commentary. On the bottom of the **[83]** second page, "The Educational Committee has been informed that charges of 'Conduct Unbecoming a Member' have been filed against three (3) members of the Lodge who allegedly violated a directive of the membership which was passed at the last Mass Meeting." Was that the case of the three members who did work overtime?

Mr. Gratz: (Interjecting) I'll object to that as a conclusion by the Witness.

Examiner Fleischli: Is there any testimony that there were three employes that did work overtime?

Mr. Peck: Yes. He said that before.

Witness Tjensvold: Yes, I said that before.

Mr. Peck: What is the situation with the three employes that did work overtime?

Witness Tjensvold: All employees were scheduled for overtime work on, I believe it was the 13th of May, a Saturday, and

all of the employes refused to work overtime with the exception of three. Three did report for work.

Examiner Fleischli: I think any inferences that are being made——

Mr. Peck: (Interrupting) As Mr. Gratz said before, it speaks for itself.

Mr. Gratz: Right.

* * * * * * * *

Q. All right. We offer in evidence, Company Exhibit No. 9.

Mr. Gratz: No objection.

Examiner Fleischli: Exhibit No. 9 is received.

(Document previously marked for identification as Complainant's Exhibit No. 9 was received in evidence.)

* * * * * * * *

[84] Q. Then there was an amended charge, was there not, that's referred to as Company Exhibit No. 7? A. Yes, correct. This one is dated June 12th and it contains the charge initially made on June 9, 1972 plus two additional items.

Q. We offer into evidence Company Exhibit No. 7.

Mr. Gratz: No objection.

Examiner Fleischli: It's admitted.

(Document previously marked for identification as Complainant's Exhibit No. 7 was received in evidence.)

* * * * * * * *

[85] Q. Company Exhibit No. 3—is that the decision that the Company received from the Regional Director on the charge and the amended charge which are in evidence as Company Exhibits No. 6 and No. 7? A. Exhibit No. 3, dated June 27th to Mr. Peck from Mr. Squillacote with copies to the Company and District No. 10 and Lodge 76 and General Counsel, NLRB.

Q. There was some reference to an appeal having been taken from that decision. Would you testify with reference to your knowledge as to whether or not, in the appeal, there is any appeal with respect to the charge set out in Company Exhibit No. 8 and item number one—which is item number one in the amended charge? A. You're referring to Exhibit No. 7?

Q. Company Exhibit No. 7. A. No. 7 is the amended charge.

Q. There was no appeal from items 1(a) or (b) or from the original charge which is Company Exhibit No. 8? A. The appeal is on item two and three of Exhibit No. 7.

* * * * * * *

[86] Q. I understand Ron Meyer is going to—or Andy Wilson—I just wanted to be sure that we know which ones—Company Exhibit No. 1, is that the number of Production and Maintenance Employes on overtime to meet production requirements? A. That's correct.

* * * * * * *

[87] Mr. Peck: Just so we don't slip up. We offer Company Exhibit No. 5. We will reserve offering Company Exhibit No. 2 until we get some testimony from another Witness and Exhibit No. 1—are you familiar with these statistics in the preparation of Exhibit No. 1?

Witness Tjensvold: Yes, I am.

Direct Examination of Mr. Tjensvold Continued

Q. Did you prepare it? A. I prepared it.

Q. What is that intended to cover? A. It shows the number of employes who reported for work on an overtime basis on a number of Saturdays and one Sunday starting a year ago.

Q. You have, for example, July 10th, 17th, 24th and 31st. What does that mean? A. The numbers scheduled—the number scheuled at that time.

Q. That was not the case of the people working at that time? A. No. There was no overtime schedule during that period. During two of those weeks we had a partial plant shut-down at which time the employes, regardless of seniority, can elect that time for their vacation. And so because approximately only a third of the employes are at work during that period it's pointless to schedule overtime so none was scheduled.

Q. Well, the first overtime in 1971 that you had was August 7th. Was that the week beginning August 7th? A. No, that's Saturday, August 7th. This is only for Saturday with the exception of one day, February 27th, which was a Sunday.

Q. I see. In other words, this is merely a list of Saturday overtime—the number of employes working on Saturday. A. Right. The number who actually worked.

Q. And up to March 7th did you have any problem from the standpoint of satisfying your Saturday overtime requirements to the extent that overtime on Saturday was needed? **[88]** A. No, but as I indicated before, the refusal rate was about normal—about 5% of those who were asked, but then others were asked in their place.

Q. So the fact that you didn't have more overtime people work was consistent with the fact that this was all you needed at that time. A. That's right. I think Mr. Meyer will be able to explain how those numbers are arrived at.

Q. You referred to a plant shut-down. Did you also have a plant shut-down—— A. (Interrupting) That was in July, 1971 and again this year in July.

Q. How about between holidays, 1971? A. There was no overtime work scheduled—no work scheduled, as a matter of fact.

Q. Was the plant shut down? A. Yes.

Q. Taking the period from March 7th to the present time, there is an indication that three people on the first shift, on May 13th, did work overtime. A. That is correct.

Q. Are those the three people that you referred to in your previous testimony?

Mr. Gratz: (Interjecting) I'll object to that. I think it was already sustained, Mr. Peck, that Mr. Tjensvold was talking about a conclusion.

Mr. Peck: That's not my question. I said are those the three people who you said worked overtime?

Witness Tjensvold: Yes, they are.

Mr. Gratz: Okay.

Examiner Fleischli: Not necessarily the same three people.

Direct Examination of Mr. Tjensvold Continued

Q. Are there any other people besides those three who worked overtime? A. There are none.

Q. Were those same three people subsequently asked to work overtime? A. Subsequently?

Q. Yes. **[89]** A. Oh, yes.

Q. And what happened? A. They declined.

Q. That's all. We offer in evidence, by the way, Company Exhibit No. 1.

Mr. Gratz: The only objection I have to Company Exhibit No. 1 is utilization of the term "Union Mandate of No Overtime." That's your word, is it not?

Witness Tjensvold: That's my word. I heard it repeatedly from the Union by the committee. That's how I came to adopt it.

* * * * * * *

Examiner Fleischli: All right, then. That is admitted.

(Document previously marked for identification as Complainant's Exhibit No. 1 was received in evidence.)

* * * * * * *

Examiner Fleischli: That's admitted.

(Document previously marked for identification as Complainant's Exhibit No. 3 was received in evidence.)

* * * * * * *

[90] Cross-Examination by Mr. Tjensvold by Mr. Gratz

* * * * * * *

Q. Referring to Joint Exhibit No. 1, which is the expired agreement, commencement of negotiations was pursuant to a modification sent by the Union to the Employer. Is that correct? A. That's correct.

Q. And that took place approximately in October of 1970? A. November 2, 1970.

Q. And under the expiration provisions of the agreement—I'm referring to page 43 now, sir, particularly paragraph 213, there was a letter of modification rather than a letter of termination sent to the Union by the Employer. Is that correct? A. That's correct.

Q. The parties then, in fact, negotiated from November—— A. (Interrupting) Actually, the first negotiating meeting was held November 10th.

Q. The Union submitted its proposal prior to that time? A. At that time.

Q. Now, ultimately, who terminated this contract? A. The Company.

Q. And the Company terminated the contract by service of a 30-day notice pursuant to this section of the agreement. Is that correct? **[91]** A. Paragraph 213, yes.

Q. And that was done and the agreement was terminated in May to be effective thirty days thereafter? A. Right, 1971.

Q. Since that time the parties have been unable to reach an agreement with respect to the terms of the collective bargaining agreement. Is that correct? A. That is correct.

Q. There were a number of various issues affecting wages, hours and conditions of employment that were not agreed on as of the termination date of the agreement and that are still not agreed on. Is that a fair statement? A. That's a very fair statement.

Q. Now, with respect to a number of those issues, after the termination of the agreement, in what areas did the Employer unilaterally, that is without prior Union agreement, change the terms and conditions of employment that had existed during the term of the prior collective bargaining agreement? I want you to go over those individually as to when they occurred and how they were initiated.

* * * * * * * *

Q. Company Exhibit No. 22—— A. This spells out four purposes, for answering your question, the areas that were at impasse at the time the labor agreement was terminated by the Company on June 19th. There were four major items. Overtime, Union Lost Time, Seniority and the 40-Hour Workweek. On overtime the question was elimination of the MATRIX System. Union Lost Time was no pay for Union Lost Time except for meeting called by the Company. With Seniority there were a variety of items and some of those were put into effect at that time in accordance with this letter of June 22nd. Overtime was then allocated on the basis of the supervisors making the choice in accordance with some **[92]** guidelines that had been presented to the Union in the negotiations. Union Lost Time was not paid for subsequent to that time. Actually, the lost time was paid for but the Union was billed for it. To date we have not received payment from the Union on it.

Very few factors of seniority were actually put into effect. The temporary transfer procedure was used because it was necessary to transfer people. On about three occasions the Kearney & Trecker Journeyman provision was used but certainly the matter of permanent transfers were not a major item in effect. The reductions of manpower had pretty much taken place by that time so there's no change there.

* * * * * * * *

[94] Q. Mr. Tjensvold, you did indicate on June 22, 1971 to Mr. Wilson that there were going to be changes made that had existed in the prior agreement with respect to certain items. Isn't that correct? A. That's correct.

Q. And that was done without prior Union agreement? Is that correct? A. Those items were at impasse.

Q. And the Company, on June 22nd, notified the Union that this was what they were going to do with respect to these disputed items. Is that correct? A. As of June 28th.

Q. And did they, in fact, do so? A. Yes, they did, and at the same time put an increase in pay in for the employes.

Q. And did the Union agree to that increase? A. Nobody gave it back.

Q. The Union did not agree? A. No.

* * * * * * * *

[95] Q. Well, did the Company terminate the checkoff that was in effect after June 22 of '71? A. It was not an item of impasse but on the advice of our Counsel, we were found to be in violation of the law because no contract existed. Therefore, there could be no Union security.

* * * * * * * *

Q. When was the Union office eliminated in the plant? A. March 1, 1971. That, too, was not a matter of negotiations nor a matter of contract.

Q. But it was eliminated as of that date? A. Yes, it was.

Q. And that was done not by agreement? **[96]** A. It was not a part of the agreement before, then or after.

Q. You never agreed with the Union that you could do it or they didn't say go ahead? A. No, this was a commercial agreement for leasing space.

Q. Now, between June 22 of 1971 and March 1 of 1972, you operated in the manner indicated in your letter of June 22, 1971. Isn't that correct? A. That is correct. We observed all of the terms of the contract except those that had been at impasse and were changed with notification to the Union.

Q. And they were, in fact, changed and you operated that way up until March 1 of '72? A. On all items except the 40-hour week, correct.

Q. Now, on March 1 the Union, in fact, was notified of '72, that the Company again was going to unilaterally initiate an impasse item. Is that correct? A. Yes. It was done both in a meeting and by letter—a confirming letter.

Q. And on this one the Union responded rather affirmatively, did they not, sir? A. Yes, that's a very apt description.

Q. Now, we discussed a meeting, and it's part of the record, that was called on March 7th, during working hours. Did you object strenuously in writing or orally to the Union Committee or to Mr. David concerning the calling of that meeting? A. I personally objected to Mr. du Pont, the President of the Union and yet, at the same time we said that we were not going to stand in the way of a meeting being held but that we certainly deserved better than no prior notice for stoppage of work during the working day.

Q. Just so the record is clear, Mr. Tjensvold, this didn't happen on an intermittent but consistent basis, did it? What I mean is there was one meeting on March 7th of 1972 during working hours. Is that correct? A. That's correct.

Q. The Union didn't do this intermittently every week or every month? A. No.

Q. That's the only occasion since the termination of the agreement in June of 1971 that the Union had called a meeting **[97]** during working hours. Is that right? A. Well, there was one other but on that one we concurred.

Q. There was a prior arrangement with respect to it? A. That's correct.

Q. This is the only one where there was no prior arrangement? A. Right.

Q. This isn't a Briggs & Stratton arrangement as you know it then? A. No, it is not.

Mr. Peck: (Interjecting) You should have asked me. We're not making that contention. The whole thrust of our case is the March 7th action.

Mr. Gratz: All right.

Cross-Examination of Mr. Tjensvold Continued

Q. With respect to the 37½ and the 7½ hours per week and per day, respectively, you indicated that that had been in the prior agreement, certainly, and in many prior agreements for a period of approximately seventeen years. Is that correct? A. That is correct.

Q. Now, essentially the difference in computation of overtime where you have a 7½ hour day and a 37½ hour week, is that overtime, when worked, is computed after 7½ hours and after 37½ hours respectively? Isn't that correct? A. When that's the normal workweek and workday, yes.

Q. So that if the workweek were, in fact, changed to 8 and 40 respectively, overtime would not commence until the employe had, in fact, worked more than 8 hours or more than 40 hours respectively. Is that correct? A. That's correct.

Q. That was the substantial change, wasn't it? A. Well, that wasn't all there was to the change, however.

Q. What else was there to the change? A. What else there was to the change was that in the tender of the Company in this change of hours, there was additional pay to compensate for the premium pay that would be lost in the ensuing two and one-half hours of the week. In addition to that there was additional pay for the time itself which would be guaranteed. Everybody would be getting two and one-half hours more per week of work for which they would be paid and at a higher rate which was also tendered as part of the negotiated package.

* * * * * * *

[100] Q. And at the present time, or let's say up to March 7th of 1972, how many employes were on layoff from the bargaining unit? A. Those with seniority in the neighborhood of three hundred and fifty to four hundred.

* * * * * * *

[101] Q. Now, going back to Company Exhibit No. 1, if you will, Mr. Tjensvold. You compiled this list and during the month of March and up to June 24, did the Company or the Employer schedule overtime on any one of the days indicated? A. I can't say for sure but I do know that consistently since March 13th employees have been scheduled regularly—not all employes, but as needed.

Q. What I'm interested in knowing—you see, this record doesn't tell anyone—when you schedule, this shows that nobody, even if they were scheduled, in fact reported for overtime or accepted overtime but it does not indicate what days overtime **[102]** was scheduled when none of the employes, in fact, accepted it. A. I can tell you with reasonable assurance that from the date of March 13th on a substantial number of employes have been scheduled for overtime and have refused it.

Q. Does the Company continue to schedule overtime? A. Yes.

Q. And has the Company taken any disciplinary action where there has been an individual's refusal? A. No, it has not.

Q. And this has continued for the months of March, April, May, June and into July? A. The reason it has not is because the acceptance of overtime is optional to the employes. Therefore, we would be hard pressed to discipline an individual employe for not accepting overtime. However, if they accepted an overtime assignment and failed to report for work, then they would be subject to discipline.

Q. As you indicate, then, I take it that all of the employes who have turned down overtime have refused and not accepted and not reported. A. That is correct.

Q. So that you haven't disciplined anyone? A. No.

* * * * * * *

[103] Q. Just one further question, Mr. Tjensvold, you understood, after the March 1 and 3, 1972 letter advising both the Union and the employes in the bargaining unit that the Company was going to initiate the 8-hour day and 40-hour week to become effective on March 13, 1972, that the reason the Union was meeting on March 17th was in response—or, on March 7th, was in response to that unilateral imposition of that program. A. I think that was clearly established that that was the reason.

Q. Have you initiated the 8-hour day or 40-hour week? A. We have not.

Q. Is it factually accurate that you were advised that if you did the employes would, in effect, still maintain the 7½ hour day and the 37½ hour week? A. That is correct.

* * * * * * *

[104] **Redirect Examination** of Mr. Tjensvold by Mr. Peck

Q. Mr. Gratz seems to be allergic to the term that you used referring to the action of March 7th as a "mandate." Did you ever hear the Union use that expression in referring to the action of March 7th? A. Constantly.

Q. Tell us what they said. A. Well, in negotiations that followed that, we made every effort to——

Q. (Interrupting) When you say "followed that," be more specific. A. Following the meeting of March 7th we had a series of meetings in the presence of a mediator and in those meetings our attempt was to get the employes to work overtime. The bargaining committee, the spokesman for the Union, repeatedly said that they could not because it was a mandate of the membership that they must abide by to not work overtime, to not work 40 hours and to not work overtime, and that, as I quoted before, Mr. David said to us that he and the bargaining committee could not take any action to reverse that but they would have to have a membership meeting and that was the meeting that was presumedly planned for March 18th. But the word "mandate" was the description that was constantly used to describe that action.

Q. And what efforts has the Company made since then to get that mandate removed? A. In negotiations, first in the series that involved the Federal Mediators, we tried to reach an accord in a period of one week so that a meeting would be called so that there could be action and reconsideration was the word that was used—reconsideration of that mandate action. Subsequent to that another series of meetings ended up in a meeting of the membership in June of this year that presumedly would get us a contract and once we had a contract the mandate presumedly would be removed.

* * * * * * *

[105] Q. This may have been covered but I want to be sure that insofar as Mr. Gratz reviewed with you the status of people on layoff, you did work overtime prior to March 7th when people were on layoff? A. Yes, we did.

Q. Did the Union, at any time, complain to the Company with reference to working overtime while people were on layoff? A. No, it did not.

* * * * * * *

---

[106] **MR. RONALD MEYER**

having been called as a witness by counsel for the complainant and having been duly sworn on oath, was examined and testified as follows:

Direct Examination of Mr. Ronald Meyer by Mr. Peck

Q. Would you give your full name, please? A. Ronald Meyer, M-e-y-e-r.

Q. And you're employed by Kearney & Trecker Corporation? A. Correct.

Q. What capacity? A. Currently Manager of Manufacturing Research and Planning.

* * * * * * *

[109] Q. Now, take in particular, Ron, the point there of recalling or hiring employes and relating back to the situation where you say that you have three shifts on a given machine and you want to utilize those machines for twenty-four hours each day. You couldn't accomplish that, could you, by calling in anybody? A. No. There's no possibility that you can because there is nothing to recall them to. The only thing you can do when a machine is manned three shifts is to investigate other methods of manufacture which is highly undesirable, partic-

ularly in the case of the more expensive numerically controlled machines because it's incredibly costly and also creates greater loads in centers which are not as desirable.

Secondarily, there is no way to call back when you have a machine occupied three shifts a day and you find **[110]** yourself having to schedule overtime as the only reasonable or viable alternative from a cost standpoint.

Examiner Fleischli: Can I clarify something for my benefit? By scheduling overtime, there are only twenty-four hours in a day. You're talking about Saturdays or Sundays?

Witness Meyer: Yes. When you're talking about overtime we have, where machines are manned three shifts a day, only the weekend is open to us—Saturdays and Sundays.

Examiner Fleischli: And the three half-hour periods which are not part of the normal workday?

Witness Meyer: It's not normal for us to use the half-hour lunch for operating purposes. There is an exception to that which involves the most expensive numerically controlled machines which are operated during the lunch by an alternate operator, normally a toolsetter type individual who operates machines during that period so that we can run them twenty-four hours a day.

Q. (By Mr. Peck) Now, is it practical to recall or hire a new employe or is there a provision in the labor contract or have you had any provision for part-time employes where you would hire people, new people, just to work on Saturday? A. No way.

Q. Saturday work is always overtime work? A. Yes, sir.

Q. You've never recalled or hired new people just for Saturday? A. No, way.

* * * * * * *

[114] Q. What happened to the program that you had in mind after March 7th? A. Well, needless to say, we did not work

overtime. We did not call back the employes we had planned to call back.

Q. Why not? A. Well, the determination on that was made based on employes being asked to return to work were being influenced by the labor situation in the plant at the time and if they refused to come back, they would lose their seniority based on the contract language that we were attempting to adhere to.

* * * * * * *

The situation at **[115]** that time, then, was to what other alternatives were available to us—no overtime and no callbacks—what else could we do? We began to reschedule machines. That is, instead of handling the load, we pushed it around. In the process of pushing the load around, you obviously push delivery dates around and, in essence, you begin to push customers around. We approached the Sales Division on the three specific occasions during the last several months asking them to define priorities for us. We were faced with some very critical orders from a variety of standpoints. Obviously, they were all critical because we promised somebody a machine which we were now unable to deliver. But there are other points beyond that. We have several contracts with the government which involve penalty clauses for failure to deliver on schedule. They have been and are now renegotiating contract prices to determine a new price level.

Q. On the penalty basis? A. On whatever basis they can renegotiate would be a penalty environment, yes. These special orders I talked about which are critical from a delivery standpoint to a whole new range of product environment that we hope to get into regarding machine system, these are computer controlled machine factors. Commitments have been made to customers to produce parts with these new centers and they are connected to their own product and production schedules and they are critical. They have, obviously, received a high priority. I could go on and on but the point here, that we've had

to shove machines around in terms of delivery several times and we have encountered the wrath of the customers in those circumstances.

Q. What about your ability to attract new orders? A. Our ability to attract new orders has been influenced by our ability to make the dates that we have promised in the past which has been gradually deteriorating. I'm sure that Andy will comment on that. It's not just the customers we hope to get but the customers we currently have who are being disappointed by our continued delays and who, I'm sure, are remembering the situation that they find themselves in.

At any rate, over a period of time we have had to give serious consideration to other means of improving our capacity and I'd like to comment on that for a moment. We accepted some **[116]** of these orders which we're now missing deliveries on and with penalty clauses that have been initiated by the government on a very low profit base in order to get the order. So, we find ourselves in a very poor cost environment under those circumstances. The additional problem we're faced with is how to get the capacity up, how to increase our capacity. The only way you can do that when you're not working overtime and if you can't call people back is to look somewhere else. For capacity, that's a very theoretical approach. Here's the plant's capacity. If you can't satisfy me there, we'll go somewhere else. It doesn't consider the cost. It takes time to do that.

* * * * * * * *

[117] Q. Those would be the departments that would be affected by that no overtime mandate? A. Oh, yes, yes. We're talking about the planing mills, cutoff saws, lathe department, departments like this which are incredibly overloaded at the present time and based upon **[118]** current manpower, can only turn out a certain amount of work.

Q. And you would work Saturdays if you had to? A. Yes, we'd do anything we could—Saturdays and Sundays. The particular problem we're working with now is because we have not worked overtime. In some centers we have fallen so far behind —in centers where we have been working three shifts of men and there is no reasonable way to recover. We're trying to find sub-contract sources for that kind of work but it's very difficult. There are very few companies with that kind of equipment and, usually, when they have it it's very busy. That's why we've always been successful in getting contract work in those kind of machines because it's the kind of equipment that very few people have and, therefore, we're able to provide a pretty valuable service from a contract standpoint to several customers who continually sent work in for us and this has created an additional problem in the specific centers. We have an overload of our own work but we, over the last two years, have just permitted ourselves to being a service for these other people—Manitowoc Engineering, Lytel, customers like this continue to give us work and we're trying to accommodate them and us on centers that are overloaded.

And, because of that, finding it necessary for us to sub-contract our own work in order to get it done on time. But, I think the important point here, to summarize this, is that we are currently very overloaded and literally out of control, attempting on a daily basis to rearrange the schedules and to minimize the impact of this capacity constraint, as I call it.

* * * * * * * *

[119] Q. I have one more question. I think it's a sort of restatement and I believe you may have covered it. Are we in control of production now, as a result of the overtime policy of the Union? A. Um-um.

Q. The answer is no? A. No.

* * * * * * * *

---

[121] **MR. ANDREW K. WILSON,**
having been called as a Witness by Counsel for the Complainant and having been duly sworn on oath, was examined and testified as follows:

Direct Examination of Mr. Andrew K. Wilson by Mr. Peck:

Q. Will you give your full name, please? A. Andrew K. Wilson.

Q. And your position with the Company? A. Vice-President, Industrial Relations, Kearney & Trecker Corporation.

• • • • • • • •

Q. Will you now please look at a document in the binder known as Company Exhibit No. 2? Do you have that before you? A. I have that before me.

Q. Will you identify that and explain it, please? A. This is a Defense Supply Agency letter written to our Vice-President of Sales, Mr. Harold Kippers, and incidentally it's not the only letter of its kind. These are coming in quite regularly. The letter implies that we are behind in our delivery and asks for us to come up with a realistic delivery [122] commitment and a negotiated penalty sum for failing to meet original delivery.

• • • • • • • •

Q. Promised delivery? A. Originally we'd promised to deliver three machines August 29th, four machines on September 28th and three machines October 28th. We currently have moved those out. The July delivery date of three machines are September 8th which is up five weeks. The three machines quoted for August 29th are out to November 25th which is three months. The four machines promised for September 28th are now December 1st and December 8th or two months out and the last order for three which were promised October 28th are December 15th and December 22nd, two months out.

• • • • • • • •

[132] Examiner Fleischli: Exhibit No. 2 is admitted.

(Document previously marked for identification as Complainant's Exhibit No. 2 was admitted in evidence.)

• • • • • • • •

Examiner Fleischli: In an off-the-record discussion the parties agreed to put the following stipulation on the record and that is that the Complainant in this case, Kearney & Trecker, is a Corporation doing business in interstate commerce and meets the self-imposed jurisdiction of limitations set by the National Labor Relations Board in administering the Federal labor laws.

Mr. Gratz: So stipulated.

Mr. Peck: Yes, insofar as interstate commerce requirements, it is subject to the provisions of the National Labor Relations Act.

• • • • • • • •

---

[138] **JOINT EXHIBIT 1**

Labor Agreement Between Kearney & Trecker Corporation and the International Association of Machinists and Aerospace Workers, AFL-CIO Lodge 76 of District 10 1969

• • • • • • • •

8. **Section 4.** Each employee, as a condition of continued employment, must, after his thirty-first (31st) day of employment, or the effective date of this Agreement, whichever is later, pay to the Union an initial fee of ten dollars ($10.00) and each month a service charge as a contribution toward the administration of this Agreement and the representation of such employee, provided, however, that

each employee will have available to him membership in the Union on the same terms and conditions as are available to every member of the Union. The service charge shall be in an amount equal to the Union's regular and usual monthly dues.

9. The Company agrees that it will each month deduct from the earnings of those employees who are employed within the bargaining unit, and who submit to the Company individual written assignments in proper form, the Union dues, or the service charges, whichever is stipulated, of said employees for the succeeding, month, and remit the same to such officer of the Union as it shall properly designate in writing to the Company. The amount of such monthly dues shall be certified to the Company by the Union.

* * * * * * * *

26. **Section 7.** No employee or Union Representative will be paid for any activity in behalf of the Union during working hours on the Company premises except as hereinafter provided and as limited by Paragraph 33:

27. Lost working time spent by Bargaining Committee members in meeting with the Company to negotiate the terms of new or revised Agreements as set forth in a Memorandum of Understanding dated May 14, 1969 entitled "Lost Working Time Due to Bargaining a New Labor Agreement," meeting to settle grievances in the Third Step of the grievance procedure; or meetings as agreed upon between the Company and the Bargaining Committee.

28. Time spent by a Steward in investigating complaints or grievances, and time spent by one of the following Union Representatives in assisting a Steward in interpreting the terms of the Labor Agreement: Bargaining, Job Evaluation, Time Study, Insurance or Retirement Plan Committeemen.

29. The Union Representative engaging in the activity as outlined in the preceding paragraphs, will keep to a minimum his lost working time. When it becomes necessary for him to stop working and engage in these allowable activities, he will adhere to the following procedure:

30. To insure that working time lost on legitimate Union business will be paid for, Union Representatives will clock out and indicate the reason on their labor ticket when presented to the Supervisor for his signature prior to their engaging in such Union business. All Union Representatives must advise their own Supervisors of the department to which they are going and the general reasons. Upon entering the other department, they must advise the Supervisor in charge who they are going to see and for what general reason and obtain his signature. (If he goes to the Union office, he will obtain the signature of the President of the Union or the Vice President if the President is absent.)

31. Upon returning to work, he will clock out on the labor ticket and inform his Supervisor that he has returned.

32. The Union Representative will follow the above procedure for meetings with Company Representatives and obtain the signature of the Company Representative conducting said meeting.

33. The Company will pay for lost working time as hereinabove set forth. However, the Union shall reimburse the Company for all such time paid for by the Company in excess of the first five hundred (500) hours paid for in each four-week accounting period. Lost working time of: (a) Union Time Study Representatives and of Union Job Evaluation Representatives in the performance of their duties as set forth in Paragraphs 28, 35, and 36; (b) Union Representatives in meetings called by the Company (other

than grievance meetings); and (c) members of the Union Bargaining Committee under the Memorandum of Understanding referred to in Paragraph 27 shall not be charged against the said five hundred (500) hour maximum pay liability assumed by the Company. Any unused part of the five hundred (500) hours above provided for may be accrued by the Union during the term of this Agreement.

* * * * * * * *

(p. 41)* ARTICLE XI

Management Clause

"203. The Management of the work and the direction of the working force including the right to hire, suspend or discharge for just cause, to assign to jobs, to transfer employees, to increase or decrease the working force, to determine products to be handled, produced or manufactured, the schedules and standards of production, and the methods, processes, or means of producing or handling, is vested exclusively in the Company, provided this right shall not be used for the purpose of discriminating against any member of the Union or to avoid any of the express provisions of this Agreement."

* * * * * * * *

(p. 78)* EXHIBIT "J"

Requirements of a Competent Workman
for Overtime Purposes Only

"295. Overtime assignments are made to expedite jobs which have fallen behind schedule for various reasons, or to assure

* The labor agreement booklet constituting Jt. Ex. 1 is a single "page" (p. 138) in the official record; the number in parenthesis is the page number in the booklet.

the delivery of customer's machine in the time specified on the order, so as to prevent cancellations or possible loss of future orders. Generally, when overtime is necessary a job has become critical and nothing can stand in the way of its completion."

* * * * * * * *

[139] **COMPANY EXHIBIT 1**

KEARNEY & TRECKER

Number of Production and Maintenance Employees on Overtime to Meet Production Requirements

	SHIFT			
Date	**First**	**Second**	**Third**	**Total**
1972				
Mar. 4	238	83	33	354

* * * * * * *

[142] **COMPANY EXHIBIT 3**

National Labor Relations Board, Region 30
Suite 230, Commerce Building, 744 North Fourth Street
Milwaukee, Wisconsin 53203 Telephone (414) 3855

June 27, 1972

Peck, Bridgen, Petajan, Lindner,
Honzik & Peck, S.C.
Attn: Egon W. Peck, Esq.
700 North Water Street
Milwaukee, Wisconsin 53202

Re: Local Lodge 76-I.A.M.A.W. (AFL-CIO) and
District 10, I.A.M.A.W. (AFL-CIO)
(Kearney & Trecker Corporation)
Case No. 38-CB-927

Dear Mr. Peck:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it appears that further proceedings are unwarranted at this time. The investigation revealed that the only charges filed against member employees were preferred by a fellow member for violation of the no overtime policy adopted by the Union. The only action which has been taken by Local Lodge 76 of this matter has been to initiate an investigation of the charge. In these circumstances, there has not occurred any disciplinary action by Local Lodge 76 which

might constitute a violation of 8(b)(1)(A). As to the other allegations contained in the charge, I do not find that there is a violation of Section 8(b)(3) of the Act. The failure by the Union to call a meeting on March 18 to discuss the overtime policy as well as the recommendation of the union's bargaining committee to reject the Company's proposal on June 8 are internal union matters and as such do not constitute bad-faith bargaining. As to the adoption by the Union on March 7, 1972 of a policy prohibiting overtime work by its member employees, this action does not appear to be in violation of the Act. *N.L.R.B. v. Insurance Agents' International Union, AFL-CIO*, 361 U.S. 477. Dismissal by this Agency does not necessarily preclude the Charging Party from pursuing its rights under statutes other than the National Labor Relations Act on matters not covered by said Act. I am therefore refusing to issue complaint at this time.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D. C. 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the [143] General Counsel in Washington, D. C. by the close of business on July 10, 1972. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General

Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours

/s/ George Squillacote
Regional Director

Enclosures

Certified Mail

Return Receipt Requested

cc: Kearney & Trecker Corporation
Attn: Andrew K. Wilson, Vice-Pres.
11000 Theodore Trecker Way
West Allis, Wisconsin 53214

District No. 10, I.A.M., AFL-CIO
Attn: Kenneth Black, G.L.R.
50 West Oakton Street
Des Plaines, Illinois 60018

Local Lodge 76-I.A.M.A.W. (AFL-CIO)
and District 10, I.A.M.A.W. (AFL-CIO)
Attn: S. C. du Pont
11000 Theodore Trecker Way
West Allis, Wisconsin 53214
General Counsel
National Labor Relations Board
Washington, D. C. 20570

---

[150] COMPANY EXHIBIT 7

Amended

United States of America
National Labor Relations Board
Charge Against Labor Organization or Its Agents

Instructions: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor Organization or Its Agents Against Which Charge Is Brought:

a. Name: Local Lodge 76—I.A.M.A.W. (AFL-CIO) and District 10, I.A.M.A.W. (AFL-CIO).

b. Union Representative to Contact: S. C. du Pont.

c. Phone No.: 476-8300.

d. Address (Street, city, State and ZIP code): 11000 Theodore Trecker Way, West Allis, Wisconsin 53214.

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 1(A) and (3) of the
(List Subsections)
National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

1(a). On or about March 7, 1972, and thereafter, the above-named Labor Organizations have required of employees in the bargaining unit represented by them, employed by the Employer, Kearney and Trecker Corporation, to refuse to work beyond 7½ hours per day or 37½ hours per week under penalty of Union discipline and by said actions restrained and coerced employees of said Employer in the exercise of the rights guaranteed under Section 7 of the Act.

(b). Further, said Labor Organizations on and since said date imposed such condition on said employees unilaterally and without bargaining with the Employer with respect thereto in violation of Section 8(b)(3) of the Act and has threatened to penalize employees who have disregarded said mandate.

2. From on or about January, 1971, to June 6, 1972, throughout the entire negotiations with the Bargaining Committee of the Unions concerning the terms of a new labor contract, the Bargaining Committee represented that it was under a mandate incorporated in a membership resolution not to submit to the membership for its consideration any proposal made by the Employer unless said **[151]** proposal was recommended for acceptance by the Committee.

Throughout the long negotiations, the Bargaining Committee refused many requests made by the Employer to submit its various proposals to the membership for its consideration on the oft repeated ground that it could not do so because of the said mandate and because they were unwilling to recommend for acceptance any of the proposals submitted by the Employer.

Relying upon this representation with respect to the membership mandate, on June 6, 1972, the Employer

made further revisions to its contract settlement proposal to meet suggestions made to the Employer by the Bargaining Committee as to what was required to enable it to submit the proposal to the membership. While the Bargaining Committee did submit the said proposal made by the Employer on June 6, 1972, to the membership for its consideration at a membership meeting held on June 8, 1972, it submitted said proposal to the membership with a written recommendation to the membership "to unanimously reject" said proposal. At said membership meeting of June 8, 1972, the said proposal made by the Employer was rejected.

By the said conduct above described, the Union violated its obligations under Section 8(b)(3) of the Act and it did not negotiate with the Employer in good faith as required by the Act.

3. Prior to March 13, 1972, the Employer's "normal" work day was 7½ hours and the Employer's "normal" work week was 37½ hours. Said normal work day and said normal work week have been provided for in prior labor agreements and were included in the labor agreement terminated on June 19, 1971. In the negotiations for a new labor agreement to succeed the agreement which was terminated on June 19, 1971, the Employer had proposed revising said normal work day and normal work week to eight (8) hours and forty (40) hours respectively and when the Union refused to agree to such revision, said issue was negotiated to an impasse. Despite the fact that said issue had been negotiated to an impasse long prior thereto, the Company deferred instituting the eight (8) hour day and forty (40) hour week until March 13, 1972. The Employer, on March 1, 1972, announced that the eight (8) hour day and forty (40)

hour week would be put into effect beginning on Monday, March 13, 1972. The Unions, in response to the said announcement of March 1, 1972, called a membership meeting which was held on March 7, 1972, and at said meeting took the action set out in the first unfair labor practice charge detailed above. On March 11, 1972, during the course of a conciliation conference, the Union requested the Company to withhold implementing the instituting of the change to a "normal" eight (8) hour day and a "normal" forty (40) hour week. The Employer, in response to the Unions' request, stated its willingness to do so provided the Unions' action in prohibiting overtime was rescinded and the status quo permitting overtime was restored. The Unions responded by stating that they could only do that by going to the membership and having the membership adopt a **[151]** resolution rescinding the mandate of March 7, 1972. The Unions, through their Business Agent, John David, replied that they would call a membership meeting for that purpose on a Saturday, March 18, 1972, and further added that if, in the meantime, the Committees could reach agreement on the terms of a new labor agreement, the membership would also be given an opportunity to consider the terms of the new labor agreement worked out between the Committees.

The Company relied upon the promises of the Unions to have the membership meeting on March 18, 1972, for the purpose of withdrawing the mandate prohibiting overtime. The Union, however, not only did not call a membership meeting as promised, but subsequently even denied, contrary to fact, that any such promise had been made and at no time since has the membership been requested to provide the *quid pro quo* which the Unions had promised as a consideration for

the Employer's withholding the implementation of the eight (8) hour day and forty (40) hour week which it had intended to institute effective March 13, 1972. By said conduct, the Unions violated the provisions of Section 8(b)(3) of the Act and did not negotiate with the Employer in good faith as required in said provision of the Act.

3. Name of Employer: Kearney and Trecker Corporation.

4. Location of Plant Involved (Street, city, State and ZIP code): 11000 Theodore Trecker Way, West Allis, Wisconsin 53214.

5. Type of Establishment (Factory, mine, wholesaler, etc.): Factory.

6. Identify Principal Product or Service: Machine Tools.

7. No. of Workers Employed: 625.

8. Full Name of Party Filing Charge: Kearney and Trecker Corporation.

9. Address of Party Filing Charge (Street, city, State and ZIP code): 11000 Theodore Trecker Way, West Allis, Wisconsin 53214.

10. Telephone No.: 476-8300.

11. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Andrew K. Wilson — Vice President
(Signature of representative of person making charge) — (Title or office, if any)

Address: 11000 Theodore Trecker Way, West Allis, Wisconsin 53214.

476-8300 — June 12, 1972
(Telephone number) — (Date)

[162] **COMPANY EXHIBIT 15**

(1 x 6) (1 of 6)

Until a new labor agreement is reached:

1. The 40 hour work week plan as set out in the letter from Mr. G. K. Wilson to the Union dated March 1, 1972, will not be considered an impasse item and will be a subject for further negotiations

2. Accordingly it will not be instituted unless and until an agreement is reached with respect thereto.

3. The normal work schedule of 7½ hours per day and 37½ hours per will be continued during said period.

4. If, as and when overtime is scheduled, only daily overtime in excess of 30 minutes may be optional. Employees may be excused from daily overtime (including said 30 minutes) for reasons acceptable to Section Manager

5. Saturday and/or Sunday overtime may be refused on the same basis as in the [illegible]

[163]

(2 of 2)

This agreement is subject to the full co-operation of the Bargaining Committee and the employees in the implementation of the objectives of this agreement.

G. K. Wilson

For: Kearney & Trecker Corp

[165] **COMPANY EXHIBIT 17**

Co X (11)

The Company will defer until Monday March 27, 1972 instituting the 40 hour work week plan as announced in its letter to the Union of March 1, 1972, in return: it is understood that daily overtime (in excess of 7½ hours) shall be part of the regular work schedule and cannot be refused, excepting for reasons acceptable to Supervision (Section Managers). However employees may refuse Saturday and/or Sunday overtime as in the past.

G. K. Wilson
For: Kearney & Trecker Corp
For: The Union

[170] **COMPANY EXHIBIT 21**

Kearney & Trecker Corporation
11000 Theodore Trecker Way
Milwaukee, Wisconsin, U.S.A. 53214
Phone 414-476-8300 . Telex 025-863 . Cable Treckermil

March 1, 1972

Local Lodge 76
11000 Theodore Trecker Way
Milwaukee, Wisconsin 53214

Gentlemen:

One of the items which was negotiated to an impasse was the Company's "40-hour work week proposal" concerning which our production and maintenance employees were advised in a communication we sent to them May 13, 1971. In it we stated, with reference to the 40-hour work week proposal, that it is the Company's intention to put the 40-hour week into effect "when the increase in production would otherwise make recalls necessary."

As you know, we are now working overtime in many areas. Under these circumstances, we can no longer delay putting the 40-hour work week into effect. In the light of the above, we hereby notify you that effective with the work week beginning on March 13, 1972 (with the third shift starting at 11:00 p.m. on Sunday, March 12, 1972), the 40-hour work week proposal will become effective.

This decision will have the following effect:

(1) The wage rate of all employees will be increased by seven cents (7¢) per hour.

(2) The regular weekly work schedule will be 40 hours instead of the previous 37½ hours and the daily work schedule will be 8 hours instead of 7½ hours. (With a 24-minute unpaid lunch period instead of the previous 30-minute unpaid lunch period.)

(3) Time and one-half at the new higher rate will be paid for all hours worked in excess of 8 per day, instead of the previous 7½ hours per day, and for all time in excess of 40 hours per week instead of the previous 37½ hours per week.

(4) In order to make this effective within the terms of the terminated Labor Agreement of 1969, all references and computations based on the 7½ hour day and the 37½ hour work week must be changed to 8 hours per day and 40 hours per week. Among the items so affected are these:

(a) Vacation benefits will be increased to 8 hours pay for each allowable day.

(b) Holidays occurring after the effective date of the 40-hour week will be paid at 8 hours pay at the employee's vacation hourly rate.

[171] (c) Jury duty pay will be increased to 8 hours per day.

(d) Military active duty pay reimbursement will be at 40 hours per week less military pay.

(5) As stated above, instead of the 30-minute unpaid lunch period provided for in paragraph 60 of the terminated Labor Agreement, except for the third shift, will be 24 minutes. There will be no assigned lunch period for employees working on the third shift.

(6) In conformity with our proposal that the third shift premium would be increased to make the pay for the

third shift employees equivalent to 40 hours, we are increasing the third shift premium from 8% to 18%.

(7) To conform to the new 40-hour work week the schedule of hours will be as follows:

Shift	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday
First						
Start		7:00 am	7:00 am	7:00 am	7:00 am	7:00 am
End		3:24 pm	3:24 pm	3:24 pm	3:24 pm	3:24 pm
Hours		8.0	8.0	8.0	8.0	8.0
Total						40.0 Hours
Second						
Start		3:24 pm	3:24 pm	3:24 pm	3:24 pm	3:24 pm
End		11:48 pm	11:48 pm	11:48 pm	11:48 pm	11:48 pm
Hours		8.0	8.0	8.0	8.0	8.0
Total						40.0 Hours
Third						
Start	11:00 pm	11:48 pm	11:48 pm	11:48 pm	11:48 pm	
End	7:00 am	7:00 am	7:00 am	7:00 am	7:00 am	
Hours	8.0	7.2	7.2	7.2	7.2	
Total					36.8 Hours*	

* (Shift premium will make pay equivalent to 40 hours.)

As stated in our letter to the Union dated June 22, 1971, "The Company wants to have a Labor Agreement and will continue to negotiate to get one." We also stated that we will otherwise continue to operate as we did previously, except for those changes which we listed and that "if more of the changes which were proposed in the Company's letter of May 13 are to be instituted, you will be notified of them in advance." This letter is in conformity with that promise.

Yours very truly

Kearney & Trecker Corporation
Andrew K. Wilson
Vice President
Industrial Relations

dw

[172] **COMPANY EXHIBIT 22**

Kearney & Trecker Corporation
11000 Theodore Trecker Way
Milwaukee, Wisconsin, U.S.A. 53214
Phone 414-476-8300—Telex 028-883—Cable Trackermil

June 22, 1971

To Our Production and Maintenance
Employees and Their Families:

This letter was given to the Union today notifying it of changes from provisions contained in our previous Labor Agreement and of an increase of 4% in pay for all unit employees effective Monday, June 28, 1971.

Local Lodge 76 IAMAW
11000 Theodore Trecker Way
West Allis, Wisconsin 53214

Gentlemen:

Because of an impasse in negotiations for a new Labor Agreement, we served the "30-day notice" on the Union to terminate the 1969 Labor Agreement. As a result, this Agreement was terminated on June 19, 1971. Although this Agreement has been terminated, we will continue to operate as though it were in effect except as you may be notified otherwise by us in advance of any contemplated changes.

Effective with the beginning of the work week June 28, 1971, we will put into effect the following items, as they were previously proposed to the Union by the Company:

Overtime

Overtime assignments will be made by supervision on the basis of "Guidelines" which were previously proposed to the Union, rather than by use of the "Matrix System".

Union Lost Time

Union lost time will be paid only for meetings called by the Company and for no other reason.

Seniority

Within the framework of the current *occupational group labor grade seniority*, these applications will be modified as shown below:

Permanent transfers will be based on skills already possessed with movement from overmanned job codes to undermanned job codes.

Temporary work assignments will be as at present, however, such assignments will continue for the duration of the temporary condition which made them necessary.

Reductions of manpower, when required, will be on an Occupational Group Labor Grade seniority basis with the added protection for an employee to move down in his "home" Occupational Group so long as he has seniority to hold, even though he may not have classified status in the lower labor grades. Reductions in the workforce shall be subject to the requisite skill, ability and efficiency to perform the required work.

[173] Kearney & Trecker Journeymen can be exempt from layoff in numbers equal to the number of Union representa-

tives for whom similar exceptions are provided in the Agreement.

A modified job category seniority grouping will be set up in the Renewment Division (REB Occupational Group) to be used there only.

The Company will furnish the Union with a quarterly seniority list, but other personnel information will be provided only as required by the Union for specific purposes.

In the event of a layoff, both the Union and the affected employees will be given at least two days notice.

The Company may institute reduced work-weeks for short periods of time to avoid increasing the number who must be laid off.

Wages

As reported in the May 13 letter, the Company's position has been that any measurable savings made as a result of these improvements in the Labor Agreement will be put into effect as wage increases. The above contract changes are equivalent to a 4.0% increase applied to the current wage lines. This wage improvement will be made effective at the beginning of the work week of June 28, 1971.

Summary

The Company wants to have a Labor Agreement and will continue to negotiate to get one. However, we feel that the long delay in finally getting such Agreement should not be used as the reason to deny our employees whatever wage benefits can be put into effect now.

As we stated at the beginning of this letter, we will continue to operate as though the terminated Agreement were still in effect except for the changes listed above. If more of the changes which were proposed in the Company's letter of May 13 are to be instituted, you will be notified of them in advance.

Sincerely yours

/s/ Andrew K. Wilson
Vice President
Industrial Relations

cp

cc: All Unit Employees
John Heidenreich
FMCS